

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BETTY MICHAL,

Plaintiff,

vs.

MERCK & CO, INC., ET AL.

Defendants.

CASE NO. 06cv1997 BTM(RBB)

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION
TO REMAND AND GRANTING
DEFENDANT'S MOTION FOR STAY
OF PROCEEDINGS**

Plaintiff has filed a motion to remand this action to the Superior Court of California, County of Los Angeles. Defendant Merck & Co, Inc. ("Merck") has filed a cross-motion to stay this action pending a decision of transfer by the Judicial Panel on Multidistrict Litigation ("JPMDL"). For the reasons discussed below, Plaintiff's motion to remand is **DENIED WITHOUT PREJUDICE** and Defendant's motion to stay this action pending transfer proceedings before the JPMDL is **GRANTED**.

This action is the subject of a Conditional Transfer Order, conditionally transferring this and other Vioxx cases to the United States District Court for the Eastern District of Louisiana ("MDL court") for coordinated or consolidated pretrial proceedings. Plaintiff has filed a notice of opposition with the JPMDL. To date, there has been no ruling on the transfer.

Plaintiff seeks to remand this action on the ground that the Court lacks diversity jurisdiction. Plaintiff contends that contrary to Merck's claims in its Notice of Removal,

1 defendant McKesson Corporation, a California corporation, was properly joined and is not
2 a “sham” defendant. Merck seeks to stay all proceedings in this Court pending a transfer
3 decision by the JPMDL.

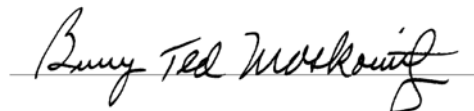
4 In determining whether to issue a stay of proceedings pending transfer proceedings
5 before the JPMDL, courts consider three factors: (1) potential prejudice to the non-moving
6 party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the
7 judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact
8 consolidated. Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997).

9 The Court finds that a stay of this case pending a transfer decision by the JPMDL
10 would promote judicial economy and avoid the possibility of conflicting rulings. In addition,
11 a stay would conserve the parties’ resources. Although a stay may result in some delay in
12 the resolution of this case, Plaintiff would not suffer significant prejudice.

13 Accordingly, the Court **GRANTS** Merck’s motion to stay these proceedings pending
14 a transfer decision by the JPMDL and **DENIES** Plaintiff’s motion to remand **WITHOUT**
15 **PREJUDICE** to renewing the motion either before this Court if the case is not transferred or
16 before the MDL court.

17 **IT IS SO ORDERED.**

18 DATED: December 12, 2006

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21 Hon. Barry Ted Moskowitz
22 United States District Judge
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